

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

OLANDO GRAVES, )  
 )  
 Plaintiff, ) No. C-06-0929 SC  
 )  
 v. ) ORDER GRANTING MOTION  
 ) TO DISMISS  
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 )  
 PENINSULA AUTO MACHINISTS LODGE )  
 NO. 1414, INTERNATIONAL ASSOCIATION )  
 OF MACHINISTS & AEROSPACE WORKERS; )  
 IAP WORLD SERVICES, INC. (formerly )  
 Johnson Control Services, Inc.), )  
 )  
 Defendants. )  
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**I. INTRODUCTION**

Plaintiff Orlando Graves ("Plaintiff" or "Graves") filed this federal action in February 2006 asserting causes of action for declaratory relief and breach of contract against Defendants Peninsula Auto Mechanists Lodge No. 1414, International Association of Machinists and Aerospace Workers ("IAMAW")<sup>1</sup>,

<sup>1</sup> Plaintiff refers to this defendant as "IAM & AW." For convenience, the Court will refer to this defendant as "IAMAW."

1 Plaintiff's workers union, and IAP World Services, Inc. ("IAP")<sup>2</sup>,  
2 Plaintiff's former employer, stemming from Defendants' alleged  
3 racial discrimination against Plaintiff during Plaintiff's  
4 employment with IAP World Services from September 1999 to June  
5 2003.

6 Because this action is duplicative of a related action  
7 formerly before this Court and because it is barred by the filing  
8 limitations imposed by 29 U.S.C. § 160(b), the Court GRANTS IAP's  
9 motion to dismiss the claims.<sup>3</sup> This dismissal includes the claims  
10 against IAMAW. Accordingly, the Court DISMISSES this action WITH  
11 PREJUDICE.

## 12 **II. BACKGROUND**

13 The instant action ("Graves II") is duplicative of another  
14 action formerly before this Court, Olando Graves v. Johnson  
15 Control World Services, et al., C-05-1772-SC, ("Graves I").<sup>4</sup> In  
16 Graves I, the Court granted summary judgment in favor of  
17 Defendants IAP/Johnson Control World Services, Inc. and denied  
18 Plaintiff's motion for reconsideration. See Order Granting  
19 Defendant's Motion for Summary Judgment, C-05-1772-SC, Docket No.

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20  
21 <sup>2</sup> In Graves I, Plaintiff erroneously sued Defendant IAP under  
22 its former name, Johnson Control World Services, Inc., an  
23 appellation the Court used in order to keep the Court's orders  
consistent with Plaintiff's filings. In the instant case,  
Plaintiff has corrected this blunder.

24 <sup>3</sup> Defendant IAMAW has filed a reply and a concluding reply in  
25 support of IAP's motion to dismiss. See Docket Nos. 36 and 37.  
The Court's dismissal, therefore, will also apply to the claims  
against IAMAW.

26 <sup>4</sup> Graves II was first before the Honorable Charles R. Breyer.  
27 Graves II was related to Graves I and the instant action was  
transferred to this Court. See Docket No. 27.

62 ("OSJ"). IAMAW was not a party to Graves I, which is on appeal.

Because the facts of Graves I bear directly on the instant action, the Court will restate those that are necessary. Plaintiff, an African-American male, began his employment with IAP in September 1999 as an alarm technician. OSJ at 2. Plaintiff was a member of the Peninsula Auto Mechanists Lodge No. 1414, International Association of Machinists and Aerospace Workers, with which IAP entered into a collective bargaining agreement ("CBA"). Id. at 23, FN 4.

In January 2003, IAP changed its drug testing policy to mandate a drug test of any employee involved in a reportable accident. Id. at 3. After Plaintiff was in such an accident, Defendant asked Graves to visit the medical clinic to have his eye checked out by Defendant's medical staff. Id. at 3-4. While there, Defendant sought to administer a drug test to Plaintiff in accordance with Defendant's company policy, but Plaintiff refused. Id. at 4. When subsequent efforts to perform the drug test were rebuffed, IAP dismissed Plaintiff from his position with IAP for refusing to comply with company policy. Id.

In response to his termination and to other incidents he feels were motivated by racial animus, Plaintiff filed Graves I on July 29, 2004 in the Superior Court for the County of Alameda, alleging that in various ways IAP discriminated against him

1 because he was an African-American.<sup>5</sup> Id. at 1. IAP removed the  
2 action to the Northern District of California. Id. The Court  
3 granted IAP's motion for summary judgment because, aside from the  
4 allegations contained in the Complaint and repeated in Plaintiff's  
5 declaration, no evidence was set forth to substantiate any of  
6 these claims. Id. at 26.

7 Plaintiff filed Graves II in the Northern District in 2006,  
8 alleging causes of action against his former employer IAP and his  
9 former workers union, IAMAW, alleging causes of action for  
10 (1) enforcement of the Collective Bargaining Agreement by issuing  
11 an order of declaratory relief against Defendants IAP and IAMAW;  
12 (2) breach of duty of fair representation under the CBA by IAMAW  
13 alone; and (3) breach of the Collective Bargaining Agreement by  
14 Defendants IAP and IAMAW. See Complaint ¶¶ 42-45, 46-64, 65-67.

### 15 **III. DISCUSSION**

#### 16 A. Enforcement and Breach of the Collective Bargaining 17 Agreement against IAP

18 Plaintiff asks the Court to issue an order to enforce his  
19 rights under the Collective Bargaining Agreement, specifically his  
20 right to be free from discrimination, harassment and retaliation  
21 based on race and his right to the remedy of money damages and  
22 reinstatement. See Compl. ¶¶ 42-45, 66.

23 Defendant IAP contends that Plaintiff's action is barred by

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25 <sup>5</sup> In Graves I, Plaintiff alleged causes of action for  
26 violations of the California Fair Employment and Housing Act, Cal.  
27 Gov. Code § 12940 et seq., termination in violation of public  
28 policy, breach of implied or express contract of continued  
employment, breach of covenant of good faith and fair dealing and  
intentional infliction of emotional distress. OSJ at 7.

1 the doctrine of res judicata. Defendant IAP's Memorandum in  
2 Support of Motion to Dismiss at 4.

3 Plaintiff contends that his claims are not so barred because  
4 the claims are not identical and his claims under the CBA were not  
5 at issue in Graves I. Plaintiff's Memorandum in Opposition to  
6 Motion to Dismiss ("Pl's. Mem.") at 2.

7 "Res judicata, or claim preclusion, prohibits lawsuits on any  
8 claims that were raised or could have been raised in a prior  
9 action." Stewart v. U.S. Bancorp, 297 F.3d 953, 956 (9th Cir.  
10 2002) (internal quotation marks and citation removed). "The  
11 elements necessary to establish res judicata are (1) an identity  
12 of claims, (2) a final judgment on the merits, and (3) privity  
13 between the parties." Hells Canyon Preservation Council v. United  
14 States Forest Service, 403 F.3d 683, 686 (9th Cir. 2005) (citation  
15 and quotation marks removed).

16 The Court finds that Plaintiff's claims under the CBA are  
17 barred by the doctrine of res judicata, the elements of which are  
18 present.

19 Whether the first element of an identity of the claims is  
20 present turns on:

21 (1)whether rights or interests established in the prior  
22 judgment would be destroyed or impaired by prosecution of the  
23 second action; (2) whether substantially the same evidence is  
24 presented in the two actions; (3) whether the two suits  
25 involve infringement of the same right; and (4) whether the  
26 two suits arise out of the same transactional nucleus of  
27 facts. The last of these criteria is the most important.

28 Hells Canyon, 403 F.3d at 690.

Focusing on the final and most important criterion, the Court  
finds that the allegations against IAP in Graves II arise from the

1 same transactional nucleus of facts from which the allegations in  
2 Graves I arose. Specifically, the allegedly discriminatory events  
3 and acts leading up to Plaintiff's 2003 termination of employment  
4 and the termination itself, as a perusal of the Complaints in  
5 Graves I and Graves II indicates.

6 Furthermore, the same evidence is presented in both actions  
7 and both suits involve the same alleged infringement of  
8 Plaintiff's right to be free from racial discrimination by his  
9 employer. Furthermore, the rights and interests of the parties  
10 established by the Court's entry of summary judgment for  
11 Defendants in Graves I would be destroyed or impaired by the  
12 prosecution of Graves II - specifically, IAP's right and interest  
13 in the efficient and final adjudication of this controversy.

14 At the time of filing Graves I, Plaintiff knew of the CBA and  
15 his rights under it.<sup>6</sup> Any claims he had against IAP under the CBA  
16 should have been brought at that time. His failure to raise these

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18 <sup>6</sup> Specifically, in Graves I, the Court determined the  
relevance of the CBA:

19 The Court is aware that Plaintiff was a member of a union with  
20 which Johnson Control entered into a Collective Bargaining  
21 Agreement[]. That agreement certainly affected the terms and  
22 conditions of employment, however, Plaintiff does not and  
23 cannot assert that his Fourth claim for breach of implied  
24 covenant of good faith and fair dealing is based on  
25 Defendant's breach of the CBA, as that agreement designates a  
26 specific and exclusive procedure for resolution of grievances.  
In fact, Plaintiff has already filed a motion to remand in  
this case, in which Plaintiff specifically argued that his  
Fourth claim is not based on the CBA, and does not even  
require interpretation of the terms of that agreement. []  
Plaintiff has apparently already exhausted his remedies under  
the CBA.

27 Order Granting Motion for Summary Judgment, C-05-1772-SC, Docket  
28 No. 62.

1 claims in Graves I is fatal to their continued existence in Graves  
2 II.

3 The remaining elements of res judicata are present. There  
4 was a judgment on the merits of Graves I when the Court issued its  
5 order granting summary judgment for IAP. Summary judgment is "a  
6 judgment 'on the merits' and thus [it is] entitled to res judicata  
7 effect in subsequent litigation (both claim preclusion and issue  
8 preclusion effect)." Schwarzer, Tashima, and Wagstaffe,  
9 California Practice Guide: Federal Civil Procedure Before Trial,  
10 14:28 (2004).

11 Also, because IAP and Plaintiff were parties in Graves I and  
12 Graves II, the element of privity of the parties is present.

13 Even if Plaintiff's claims against IAP are not barred by res  
14 judicata, they are barred by the filing limitation imposed by 29  
15 U.S.C. § 160(b), as the Court will discuss in the next section.

16 B. Alleged Breach of the CBA and Breach of the Duty of Fair  
17 Representation by IAMAW

18 Plaintiff also asserts that Defendant IAMAW breached the duty  
19 of fair representation by arbitrarily refusing to investigate and  
20 "process" his meritorious grievance and by declining to proceed to  
21 arbitration. Compl. ¶¶ 46-64. Plaintiff was terminated in June  
22 2003 and was informed in January of 2004 that the Union would take  
23 no further action. IAMAW's Memorandum in Support of Motion to  
24 Dismiss at 2. As stated above, Plaintiff filed the instant action  
25 in 2006, more than six months after the alleged breach of fair  
26 representation.

27 Defendant IAMAW contends that Plaintiff's claim is barred by  
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1 the statute of limitations established in 29 U.S.C. § 160(b) and  
2 confirmed by the U.S. Supreme Court in DelCostello v.  
3 International Brotherhood of Teamsters et al., 462 U.S. 151  
4 (1983). IAMAW's Memorandum in Support of Motion to Dismiss at 1-  
5 2.

6 The U.S. Supreme Court determined in Delcostello that in  
7 suits by an employee against an employer for breaches of a  
8 collective bargaining agreement and suits against a union that had  
9 allegedly breached its "duty of fair representation by mishandling  
10 the ensuring "grievance and arbitration proceedings" are governed  
11 by the statute of limitations set forth in section 10(b) of the  
12 National Labor Relations Act, 29 U.S.C. § 160(b). DelCostello,  
13 462 U.S. at 154-155. The applicable time period under Section  
14 160(b) is six months.

15 The Court finds that Plaintiff's claims under the CBA are  
16 barred by the statute of limitations established by 29 U.S.C.  
17 § 160(b). As stated above, suits such as the one Plaintiff  
18 brings, are governed by the six-month limitations period of  
19 section 160(b). Plaintiff's present action was filed in February  
20 2006, far beyond the filing limitation imposed by the statute.

21 Plaintiff contends otherwise. He asserts that he could not  
22 file his suit until he received a "right to sue" letter from the  
23 California Department of Fair Housing and Employment. See  
24 Declaration of Orlando Graves in Support of Opposition to Motion to  
25 Dismiss ("Graves Decl.") at 2-3. While this may be the case in  
26 claims under California's Fair Housing and Employment Act, it  
27 cannot be true of Plaintiff's filing of his CBA claim which is  
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1 governed by 29 U.S.C. § 160(b).

2 Plaintiff also asserts that the filing limitation imposed by  
3 29 U.S.C. § 160(b) should be equitably tolled under the condition  
4 set forth in California law. See Graves Decl. at 3-4. Plaintiff  
5 cites Auto Workers v. Hoosier, 383 U.S. 696 (1966) for the  
6 proposition that state law timing statutes should govern the  
7 filing deadlines in his case. In Hoosier, the U.S. Supreme Court  
8 stated that if no federal provision governs, the applicable state  
9 statute should govern filing. Id. at 704-705. In Delcostello,  
10 cited above, the Court distinguished Hoosier, stressing that it  
11 "did not involve any agreement to submit disputes to arbitration,  
12 and the suit was brought by the union itself rather than by an  
13 individual employee." 462 U.S. at 162. As the quote from  
14 Delcostello regarding 29 U.S.C. § 160(b) indicates, Graves II,  
15 being a suit by an employee against his union and former employer,  
16 is governed by the six-month limitation imposed by the statute.

17 The Court's determination only mandates dismissal of the  
18 claims against IAMAW, but it also provides another basis for  
19 dismissing the claims against IAP.

20 Accordingly, the Court GRANTS the motion to dismiss  
21 Plaintiff's claims and the Complaint, and thereby the case. These  
22 claims, the Complaint and the case are hereby DISMISSED WITH  
23 PREJUDICE.

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1 **IV. CONCLUSION**

2 Plaintiff's claims are barred by the doctrine of res judicata  
3 and by the filing limitation imposed by 29 U.S.C. § 160(b).  
4 Accordingly, the Court GRANTS the motion to dismiss the claim and  
5 the Complaint. The claims, the Complaint, and the case are  
6 DISMISSED WITH PREJUDICE.

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8 IT IS SO ORDERED.

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10 Dated: July 28, 2006

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14 UNITED STATES DISTRICT JUDGE  
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